RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ASSAULT — DANGEROUS WEAPON. — To constitute an assault with a dangerous weapon, there must be an intentional attempt by violence to do injury to the person of another, and such an attempt must be coupled with the present ability to do such injury. Therefore, pointing an *unloaded* gun at another, whereby he is put in fear, is not an assault with a dangerous weapon. *State* v. *Godfrey*, 20 Pac. Rep. 625 (Ore.).

BANKS AND BANKING — COLLECTIONS. — Where a bank receives a check for collection, it must return either the check or the money. Therefore, if the collecting bank surrenders the check to the drawee bank, and accepts in payment a cashier's check, which is afterwards dishonored, the collecting bank is liable to the depositor for the amount of his check. The bank has no right, unless specially authorized, to accept anything in lieu of money. *Fifth Nat. Bank* v. *Ashworth*, 16 Atl. Rep. 596 (Pa.).

BANKS AND BANKING — NEGLIGENCE — LIABILITY OF DIRECTORS. — The president of a bank misappropriated the funds; money was loaned on little or no security, and to irresponsible persons. Directors, though required to meet weekly, only met two or three times a year, and never caused the books to be examined, or called for statement of accounts with other banks. The bank on suspension was able to pay but 10 per cent. on the deposits. *Held*, that though directors were ignorant of the affairs of the bank, and were not guilty of bad faith, they were guilty of such negligence as rendered them liable to the depositors. *Marshall* v. *Savings Bank*, 8 So. E. Rep. 586 (Va.).

BILLS AND NOTES — DOMICILED NOTES — RIGHTS AND DUTIES OF BANKS AT WHICH THEY ARE MADE PAYABLE. — A note executed by plaintiff, and made "payable *at*" defendant bank, was, on maturity, presented by the holder and paid by defendant bank out of funds then on deposit to the credit of plaintiff. The bank had no express instructions from plaintiff to pay the note, and evidence as to a custom, from which it was attempted to show an implied authority so to pay, was conflicting. In an action by the maker of the note to recover from the bank the amount of the deposit thus applied, *held*, that such a note is not equivalent to a check, and that, in the absence of a binding custom, the maker does not, by merely designating on the note a bank as the place of payment and keeping a deposit there, confer any power or authority, or impose any duty upon the bank in reference to the note; such designation being nothing more than a convenience for fixing with certainty the conditional liability of indorsers. *Grissom* v. *Commercial Nat. Bank*, 10 S. W. Rep. 774 (Tenn.).

In this case the important question as to the difference between a promissory note domiciled at a bank and a check has been for the first time passed upon by the Supreme Court of Tennessee. The decision is in accord with the law of Massachusetts, Illinois, Indiana, Missouri, and Louisiana; while the courts of Iowa (*quære*) and New York follow the English rule, though only to the extent of holding that such a note confers upon the bank to which it is presented by the lawful holder authority to apply, at its option, deposits of the maker toward payment, or even to advance the amount and charge the same as a loan to the maker. As to English rule, see *Rolin* v. *Steward*, 14 C. B. 595; *Robarts* v. *Tucker*, 16 C. B. 560. For a full discussion of the authorities see the opinion of Folkes, J., in the principal case.

COMMON CARRIERS — REASONABLENESS OF REGULATIONS — EXEMPLARY DAMAGES. — A railroad company refused to deliver baggage at one of its stations where it was most convenient for its passengers to connect with another line, but allowed passengers to take and leave its trains there. *Held*, the regulation is unreasonable and void; and if the jury think it was adopted wilfully,

or with such negligence as indicates a wanton disregard of the rights of others, they may give exemplary damages. *Pittsburgh, C., & St. L. Ry. Co.* v. *Lyon*, 16 Atl. Rep. 607 (Pa.).

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — PHYSICIAN'S LICENSE. — A State statute which requires every physician to procure a certificate from the State Board of Health that he is a graduate of a reputable medical school, or has practised in the State ten years, or had passed a satisfactory examination as to his qualifications, and which makes the practice of medicine without such certificate a misdemeanor, is a constitutional regulation, and does not deprive a physician who has practised in the State for six years before the passage of the act, of his liberty or property without due process of law. There is no such "vested right" or "estate" in a profession that the State cannot at any time impose upon its exercise such reasonable and appropriate qualifications as are demanded by the public welfare. *Dent* v. *West Virginia*, 9 Sup. Ct. Rep. 231.

The court distinguish *Cummings* v. *Missouri*, 4 Wall. 277, and *Ex parte Garland*, ib. 333. as being cases in which the alleged qualifications were, in reality, penalties imposed for past acts, and not reasonable qualifications imposed upon the exercise of professional callings. These decisions, it is said, merely decide that preachers and lawyers "cannot be deprived of the right to continue in the exercise of their respective professions by the exaction from them of an oath as to their past conduct respecting matters which have no connection with such profession."

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — PRIVILEGES AND IMMUNITIES. — Sect. 4059, Iowa Code, provides that "if any person now or hereafter has in his possession in this State any such Texas cattle, he shall be liable for any damage that may accrue from allowing said cattle to run at large, and thereby spreading the disease known as the 'Texas Fever.'" *Held*, that this statute is constitutional. It is not in conflict with sect. 8, art. 1, Constitution of United States, as an attempt to regulate interstate commerce; nor with sect. 2, art. 4, relative to privileges and immunities of the citizens of the several States. *Kimmish* v. *Ball*, 9 Sup. Ct. Rep. 277.

CONSTITUTIONAL LAW — PENAL CLAIMS IN ONE STATE — ENFORCEMENT IN ANOTHER STATE — REDUCTION INTO JUDGMENT. A New York statute (Act of 1875, ch. 611) provides that if an officer of a corporation makes a false report, etc., he shall be liable for all the corporation debts, etc. *Held*, that H, who had obtained a judgment against A in New York under the above statute, could bring no action on that judgment in Maryland. No State will enforce the penal laws of another State; the reduction of a penal claim into judgment does not change the nature of the claim.

The dissenting opinion is based on the theory that the word "penal" is used in two senses: (1) With reference to those breaches of duty which confer upon individuals the right to recover, at their option, from the offender a determinate sum; (2) breaches of duty which are strictly crimes, and of which the State alone can take cognizance. Only the latter class properly come within the rule that no State will enforce the penal laws of another State. *Attrill* v. *Huntington*, 16 Atl. Rep. 651 (Md.).

The decision itself is supported by the weight of authority; but there seems to have been a tendency in some recent cases toward the view expressed in the minority opinion. See *Engine Co.* v. *Hubbard*, 101 U. S. 452; *Chase* v. *Curtis*, 113 U. S.

CONSTITUTIONAL LAW — POLICE POWER — NUISANCE — FENCES. — St. Mass. 1887, c. 348, provides that any fence unnecessarily exceeding six feet in height maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance. Construing the act to mean that the motive must be actual malevolence, without which the fence would not have been erected or maintained, the court *held* it a constitutional exercise of the police power. While the legislature could not under the police power prohibit putting up or maintaining stores or houses with malicious intent, yet a small limitation of existing rights incident to property is permissible. And even with regard to fences already built at the passage of the act, considering the smallness of the injury, and the nature of the evil to be avoided, and the fact that police regulations may limit the use of property in ways which greatly diminish

its value (*Mugler* v. *Kansas*, 123 U. S. 623; *Kidd* v. *Pearson*, 128 U. S. 1), the act cannot be deemed unconstitutional. *Rideout* v. *Knox*, 19 N. E. Rep. 390 (Mass.).

EQUITY — JURISDICTION — BILL OF REVIVOR. — A bill for discovery, an account, and an injunction, against an infringer of a patent, may be revived against his executor as to the account, although the right to the injunction — the principal relief sought — is gone. *Hohorst* v. *Howard*, 37 Fed. Rep. 97 (N. Y.).

FACTORS AND BROKERS — WRONGFUL SALES—MEASURE OF DAMAGES. — The measure of damages in an action against a broker for selling his principal's stocks in violation of his orders is the highest intermediate value reached by the stocks between the time of sale and a reasonable time after the owner has received notice of it to enable him to replace the stocks. *Galigher* v. *Jones*, 9 Sup. Ct. Rep. 335. The Supreme Court here adopts the New York rule as to measure of damages as laid down in *Wright* v. *Bank*, 110 N. Y. 237, digested in 2 HARV. L. REV. 188.

HIGHWAYS — OBSTRUCTION BY ORDER OF COURT. — By order of the judge of a State court, a rope was stretched across a highway in a city, to prevent disturbance of the court by travel over said highway. Plaintiff drove against the rope and was injured thereby. *Held*, plaintiff has no cause of action against the city. *Belvin* v. *City of Richmond*, 8 S. E. Rep. 378 (Va.).

INSURANCE — RIGHT TO SUBROGATION. — Where the loss is caused by the negligence of a third person, the insurance company cannot, before indemnifying the insured, compel him to assign to it his right of action against the tort-feasor. No right to subrogation arises until the company has satisfied the loss. *Ins. Co.* v. *Fidelity Title and Trust Co.* 16 Atl. Rep. 791 (Pa.).

NEGLIGENCE — DANGEROUS SUBSTANCES. — If the owner of a lot abutting on a public street in a city erects a building on it with a roof so constructed that ice and snow collecting on it will naturally and probably fall on the adjoining sidewalk below, he is liable, without other proof of negligence, to a person injured by the falling ice or snow, while travelling on the sidewalk with due care. It is no defence that he exercised all the diligence and care he could to remove the snow and ice from the roof. The gist of the negligence in such case consists not in the management of the roof, but in the improper and unsafe construction. *Hannem* v. *Pence*, 41 N. W. Rep. 657 (Minn.).

For a case almost exactly similar, see *Shipley* v. *Fifty Associates*, 101 Mass. 251, 106 Mass. 194. These cases come under the peculiar principle of *Rylands* v. *Fletcher*, L. R. 3 H. L. 330. The defendant in such a case can free himself from liability by showing that the escape of the dangerous substance was occasioned by the plaintiff's own default or by *vis major*. See *Box* v. *Jubb*, 4 Ex. D. 76, and *Carstairs* v. *Taylor*, 6 Ex. 217.

PATENTS FOR INVENTIONS — INFRINGEMENT — INJUNCTION BEFORE ISSUE OF PATENT. — Bill in equity to enjoin the use of an invention for which the plaintiffs had not obtained a patent. They had filed an application for a patent which was still pending in the patent office when this bill was filed. *Held*, a court of equity has no jurisdiction to enjoin the infringement of an invention before a patent has been issued, notwithstanding an application for the same has been made and is still pending in the patent office. In *Butler* v. *Bull*, 28 Fed. Rep. 754, which is the only case in which this point has before been directly decided, the injunction was allowed, but the question was not discussed upon principle, and the authorities cited do not support the decision of the court. That case must, therefore, be considered as erroneous in principle; for at common law there was no special property in an invention. The right of property which the inventor has in his invention is derived altogether from statute, and is created by the patent; and the power of the court to deal with patents is regulated by § 4921 of the Rev. Stats., which gives protection only to such rights as are "*secured by patent.*" *Rein et al.* v. *Clayton et al.*, 37 Fed. Rep. 354 (Mich.).

PROPERTY — RIGHTS OF OWNER — PRIVATE PROPERTY AFFECTED WITH A PUBLIC INTEREST. — On a bill to restrain the defendants from depriving the plaintiff of the Board of Trade quotations, *held*, that although the Chicago

Board of Trade is a private corporation, and the business transacted by it daily is of a private nature, yet, it having for many years permitted and invited a telegraph company to transmit during the sessions of the Board, to all persons who chose to pay for the information, reports of the dealings of the Board, fluctuations in prices, etc., and the information so obtained having, in consequence, become of essential importance to the commercial world, such a system of publishing information has become affected with a public interest, and the Board cannot now treat its information as purely private, and withhold it from the public. *New York & C. Grain and Stock Exch.* v. *Chicago Board of Trade*, 19 N. E. Rep. 855 (Ill.). This case is an interesting illustration and extension of the doctrine laid down in *Munn* v. *Illinois*, 94 U. S. 113. It differs from that case in that here no statutory question is involved.

REAL PROPERTY — FIXTURES — RIGHTS OF REAL AND CHATTEL MORTGAGEES. — Machinery upon which there was a chattel mortgage for the purchase price was annexed to the realty, but in such a way that the realty would not be injured by its removal. There was a prior mortgage upon the land, also a subsequent mortgage upon the land and machinery, which described the latter as personalty. *Held*, that the machinery would be regarded as personalty, as against the subsequent mortgagee, for he had notice; and as against the prior mortgagee, for his original security would thereby be in no degree diminished. *Binkley* v. *Forkner*, 19 N. E. Rep. 753 (Ind.).

Upon the disputed question as to the rights of real and chattel mortgagees to fixtures attached to the realty under an agreement that they shall remain personalty until paid for, this case represents the better view as to both classes of mortgagees. In accordance with this case, see as to rights of a prior mortgagee of the realty, *Tifft* v. *Horton*, 53 N. Y. 377; as to the rights of the subsequent mortgagee, *Davenport* v. *Shunts*, 43 Vt. 546, and *Stillman* v. *Flenniken*, 58 Ia. 450. But see *contra*, as to rights of prior mortgagee, *Hunt* v. *Bay State Iron Co.*, 97 Mass. 279, and *Porter* v. *Steel Co.*, 122 U. S. 267.

REAL PROPERTY — RULE AGAINST PERPETUITIES. — Bequest to the mayor of the city, and the presidents of two medical colleges and their successors, in trust forever, for the purpose of founding a public library. *Held*, that as the intention was to vest the property in the persons who might from time to time occupy the official positions mentioned forever, and not in the corporations of which they were the heads, the bequest was void by the rule against perpetuities. *Cottman* v. *Grace et al.*, 19 N. E. Rep. 839 (N. Y.).

TELEGRAPH COMPANIES — LIABILITY FOR DELAY OF TELEGRAM. — A telegraph company fails to deliver promptly a message whereby the plaintiff loses an opportunity of buying land which rapidly rises in value. *Held*, that the company was liable, the damage not being too remote or contingent. *Alexander et al.* v. *Western Union Tel. Co.*, 5 So. Rep. 397 (Miss.).

For other cases on the liability of a telegraph company to the receiver of a telegram for a delay in its delivery, see *Wadsworth* v. *Tel. Co.*, 86 Tenn. 695, digested in 2 HARV. L. REV. 146.

WILLS — CONSTRUCTION — CHARGING LEGACIES ON RESIDUARY ESTATE. — In the absence of extrinsic circumstances indicating a different intention, when a will gives general legacies followed by the usual residuary clause disposing of the whole of the testator's real and personal property, the general legacies are not charged upon the land included in the residuary devise. *Brill* v. *Wright et al.*, 19 N. E. Rep. 628 (N. Y.).

For the contrary rule see *Wilcox* v. *Wilcox*, 13 All. 252; *Lewis* v. *Darling*, 16 How. 1; and *Greville* v. *Brown*, 7 H. L. Cas. 688. But see the opinion of Lord Wensleydale in the last case, in which he seemed disposed to agree with the rule adopted in the above case.